AMERICAN MOTORCYCLIST ASSOCIATION, *ET AL.*

188 IBLA 177 Decided August 26, 2016

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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AMERICAN MOTORCYCLIST ASSOCIATION, *ET AL.*

IBLA 2014-130, *et al.* Decided August 26, 2016

Appeals from a Record of Decision of the State Director, California State Office, and Field Manager, Hollister (California) Field Office, Bureau of Land Management, approving the Clear Creek Management Area Resource Management Plan. BLM/CA/PL-2014/004+1617.

Affirmed.

1. Administrative Procedure: Administrative Review;
Rules of Practice: Dismissal;
Rules of Practice: Appeals: Standing to Appeal

The Board properly dismisses an appeal of a record of decision adopting a resource management plan that includes implementation decisions establishing levels of off-highway vehicle use on public lands, where the appellant has not participated in the process leading to the decision under appeal, or does not otherwise meet the requirements of 43 C.F.R. § 4.410(b).

2. Administrative Procedure: Administrative Review;
Rules of Practice: Dismissal;
Rules of Practice: Appeals: Standing to Appeal

The Board properly dismisses an appeal of a record of decision adopting a resource management plan that includes implementation decisions establishing levels of off-highway vehicle use on public lands, where the appellant fails to show that it has a legally cognizable interest that has been adversely affected by the decision, as required by 43 C.F.R. § 4.410(d).

3. Federal Land Policy and Management Act of 1976:
Land-Use Planning

A BLM decision implementing a land-use plan, such as a decision set forth in an RMP establishing levels of off-highway vehicle use on the public lands, will be affirmed if the decision adequately considers all relevant factors, reflects a reasoned analysis, and is supported by the record, absent a showing of compelling reasons for modification or reversal. An appellant has the burden of demonstrating by a preponderance of the evidence that BLM committed a material error in its factual analysis, that BLM failed to give due consideration to all relevant factors, or that no rational connection exists between the facts found and the choices made.

4. Environmental Quality: Environmental Statements;
Federal Land Policy and Management Act of 1976:
Land-Use Planning;
National Environmental Policy Act of 1969: Environmental Statements

BLM land-use planning implementation decisions that preclude or limit licensed motorized vehicle use of an area of the public lands that has naturally-occurring asbestos, in order to protect the health of recreational users, will be affirmed where BLM prepared an EIS that took a hard look at the significant environmental consequences of taking such action, and reasonable alternatives thereto, and the appellant has failed to carry its burden to demonstrate, with objective proof, that BLM did not adequately consider the likely effects on the health of recreational users and other aspects of the human environment, as required by section 102(2)(C) of the NEPA, 42 U.S.C. § 4332(2)(C) (2012).

5. Rights-of-Way: Revised Statutes Sec. 2477;
Federal Land Policy and Management Act of 1976:
Land-Use Planning

A BLM land-use planning implementation decision that administratively restricts motorized vehicle use of an existing road that crosses an area of public lands does not impact the R.S. 2477 right-of-way status of the road when that status has yet to be judicially or administratively determined and BLM does not, by design or action, adversely affect whatever R.S. 2477 right-of-way status arose prior to the October 21, 1976, repeal of the statute.

APPEARANCES: Nicholas Haris, Placerville, California, for American Motorcyclist Association; Steve Anderson, Sebastopol, California, *pro se*; Ray Bennett, Lucerne, California, *pro se*; Jonathan Elam, Occidental, California, *pro se*; Richard Colenzo, Sebastopol, California, *pro se*; Rt. Caldwell, Sebastapol, California, *pro se*; Alan Hannum, Santa Rosa, California, *pro se*; James Long, Forestville, California, *pro se*; Arlis S, Sebastapol, California, *pro se*; Peter Lipson, Sebastapol, California, *pro se*; Kris Larcher, Santa Rosa, California, *pro se*; Edward Tobin, Marina, California, *pro se*; Jennifer Schreck, Los Altos, California, *pro se*; Barbara J. Thompson, Esq., Hollister, California, for the County of San Benito; Curt McDowell, Mountain View, California, *pro se*; Randall Johnson, Newark, California, *pro se*; Terry Pederson, Sunnyvale, California, *pro se*; Justin Hensley, Turlock, California, *pro se*; Ken Deeg, Aptos, California, *pro se*; Amy Granat, Clarksburg, California, for the California Off-Road Vehicle Association; Paul Slavik, Sacramento, California, for the California Off-Highway Motor Vehicle Recreation Commission; Bruce Brazil, Hayward, California, for the California Enduro Riders Association; Erica Niebauer, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE ROBERTS

The American Motorcyclist Association (AMA) and others have appealed from a February 11, 2014, Record of Decision (ROD) issued jointly by the State Director, California State Office, and the Field Manager, Hollister Field Office, Central California District, Bureau of Land Management (BLM), approving the Clear Creek Management Area (CCMA) Resource Management Plan (RMP). At issue are various Implementation Decisions (IDs) included in the RMP that concern off-highway vehicle (OHV) use of the CCMA. The decisions reflect BLM's evaluation of the existing motorized routes in the CCMA, totaling approximately 440 miles, from the standpoint of the intended use and manageability of each route. Based on its review, BLM designated each route as Open, Limited, Closed, or Closed to all but Administrative Use. Of foremost concern to BLM are the risks to human health associated with the release of airborne asbestos emissions resulting from OHV use in the Serpentine Area

of Critical Environmental Concern (ACEC), one of the management zones in the CCMA. BLM based the ROD on an April 5, 2013, Final Environmental Impact Statement (EIS),[1] prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA),[2] and implementing regulations of the Counsel of Environmental Quality (CEQ)[3] and the Department of the Interior.[4]

The primary issue in these appeals is whether BLM complied with NEPA in considering the potential environmental consequences of closing certain routes in the Serpentine ACEC to OHV use and of imposing various restrictions on motorized use of other routes in the CCMA. In particular, Appellants argue that the EIS presents an inaccurate evaluation of the risks to the health of OHV users posed by naturally-occurring asbestos in the CCMA; that the risks defined in the EIS are exaggerated; and that there is no scientific basis for the conclusions reached by BLM regarding those risks. Because Appellants have not met their burden to demonstrate by a preponderance of the evidence that BLM failed to adequately consider the health risks of OHV use in the CCMA, or that BLM's stated need to protect the public from those risks was inflated or otherwise erroneous, we conclude that Appellants have not shown that BLM failed to comply with section 102(2)(C) of NEPA.

Appellants also argue that BLM improperly designated certain routes as closed or limited to motorized vehicle use because of their status as Revised Statute § 2477 (R.S. 2477) rights-of-way (ROWs).[5] They claim that BLM should have adjudicated the R.S. 2477 status of the routes before rendering the IDs affecting their use. Because nothing in the record suggests that any of the routes has been determined to constitute

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[1] The EIS is composed of two volumes (I and II), each of which is separately paginated. The first volume contains an Executive Summary and numbered chapters concerning the purpose sought to be achieved, the proposed management actions and alternatives, the affected environment, and environmental consequences. The second volume contains the lettered appendices. We will cite to the EIS, using the volume number (I or II) as the prefix, followed by the page number.

[2] 42 U.S.C. § 4332(2)(C) (2012).

[3] 40 C.F.R. Chapter V.

[4] 43 C.F.R. Part 46.

[5] Section 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1970), commonly referred to as R.S. 2477, was repealed by section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2793 (1976). *See generally Kane County v. United States*, 772 F.3d 1205, 1223 (10th Cir. 2014), *cert. denied*, 136 S. Ct. 319 (2015); *Rainer Huck*, 168 IBLA 365, 371-72 n.8 (2006).

an R.S. 2477 ROW, and because BLM has no obligation to administratively determine the validity of any R.S. 2477 ROW, we reject Appellants' R.S. 2477 argument.

BACKGROUND

The RMP, a comprehensive land-use planning decision issued under section 202 of FLPMA,[6] represents an ongoing effort by BLM to manage the CCMA. The CCMA is a 75,829-acre area of public (63,197), State (1,964), and private (10,668) lands situated in southern San Benito and western Fresno Counties, California, encompassing the southern portion of the Diablo Mountain Range, Hernandez Valley, and the Pajaro, Arroyo Pasajero, and Silver Creek Watersheds. BLM divided the CCMA into five management zones: the Serpentine ACEC and the Tucker, Condon, Cantua, and San Benito River Zones.[7]

Hundreds of miles of roads and trails, created to support historic timber harvesting and mining activities, are situated within the CCMA. The public lands in the CCMA, which are a reasonable travel time and distance from the San Jose and San Francisco, California, metropolitan areas, are a popular location for OHV and other recreational use.[8] The CCMA has long been one of the 5 most popular riding areas for OHVs in the state.[9] Prior to the May 1, 2008, temporary closure of the CCMA to OHV use, BLM estimated annual recreational use to be "35,000 visitor[-use] days, with about 80% . . . attributed to OHVs."[10]

In the course of developing the RMP, BLM evaluated all of the existing motorized routes in the CCMA, totaling approximately 440 miles, from the standpoint of the intended use and manageability of each route. BLM specifically considered recreation opportunities in the CCMA, the likelihood of conflicts among users, the potential for soil loss, the need to protect special status species and other sensitive resources, and the need to protect the health of OHV users.[11] Based on its review, BLM designated each route as Open, Limited, Closed, or Closed to all but Administrative Use.

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6 43 U.S.C. § 1712 (2012).

7 *See* EIS at I-15.

8 *See id.* at I-174 to I-177.

9 *See id.* at I-175.

10 *Id.* at I-176.

11 *See* ROD, Appendix II (Route Designation); EIS at I-41 to I-42.

BLM recognized that "the major air quality concern in the CCMA is the release of airborne asbestos emissions that pose a risk to human health and the environment when CCMA soils are disturbed from visitor use activities in the Serpentine ACEC."[12] The most common form of asbestos found in the CCMA is chrysotile asbestos, a known human carcinogen, which is classified as a hazardous air pollutant under the Clean Air Act.[13] Asbestos is released into the air when disturbed by human activity and weather. Within the CCMA is the 30,200-acre Serpentine ACEC, which was designated in the 1984 Hollister RMP to protect special status plant species and other resources, and to promote public health that may be threatened by naturally-occurring asbestos.[14] In particular, BLM restricted motorized recreational use in the ACEC to permitted use by highway-licensed vehicles. Such limitations are designed to minimize the risk to human health by reducing airborne asbestos emissions. In the CCMA lands outside the ACEC, motorized recreational use would be similarly limited to permitted use by highway-licensed vehicles, all-terrain vehicles (ATV), and ultra-terrain vehicles (UTV).

Most importantly, in the decisions on appeal, BLM designated the Serpentine ACEC as a "Limited" area for vehicle use year-round. Under this designation, motorized and non-motorized vehicle use would be limited, respectively, to 5 and 12 visitor-use days per year. Motorized vehicle use would be restricted to highway-licensed vehicles during the daytime (from one-half hour before sunrise to one-half hour after sunset), by permit only, on a limited number of routes designated as "Open."[15] The routes declared "Open" would be unified as a Scenic Touring Route running approximately 32 miles through the ACEC, and would be developed and maintained to BLM roadway standards.[16] Access would be restricted by the placement of locked gates where the roads enter the ACEC, and the gates could be opened only by authorized permittees.[17] About 195 miles of routes and cross-country areas in the ACEC would remain closed to motorized vehicle use, and the routes would be decommissioned and reclaimed, so as to protect sensitive resources, reduce sediment transport, and control erosion.[18] Approximately 88 miles of additional routes in the

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[12] EIS at I-231.

[13] 42 U.S.C. §§ 7401-7671q (2012); *see* EIS at I-180, I-231, I-368, I-371, II-211 ("[T]here is no debate that all types of asbestos cause cancer and debilitating and fatal non-cancer disease"), II-220 to II-221, II-223.

[14] *See* EIS at 14; *id.* at I-180, I-231, I-368, I-371, II-211, II-220 to II-221, II-223.

[15] *See* ROD at 1-18, 1-22.

[16] *See id.* at 1-22.

[17] *See* EIS at I-421.

[18] *See* ROD at 1-22, 1-24, 1-25.

ACEC would be designated "Closed to all but Administrative Use," with access allowed to permittees, licensees, rights-of-way holders, and Federal government personnel and authorized representatives.[19]

Nighttime use in the ACEC would be barred, and camping and staging associated with recreational activities would be precluded, except in the case of the Jade Mill Campground.[20] BLM would not issue any special recreation permits (SRPs) for organized events in the ACEC.[21] The Tucker, Condon, Cantua, and San Benito River Zones would be designated as "Limited" areas for motorized vehicle use by highway licensed vehicles and ATV/UTVs on designated routes (including potential and proposed routes).[22] BLM would issue SRPs for organized events outside the ACEC.[23] Finally, the CCMA would be temporarily closed during periods of extreme wet or dry conditions.[24]

On May 1, 2008, BLM temporarily closed a total of 30,000 acres in the Serpentine ACEC and adjacent BLM-administered public lands to all forms of entry and public use.[25] This decision was based on a report issued on May 1, 2008, by the U.S. Environmental Protection Agency (EPA), Region 9, a cooperating agency in the preparation of the EIS, entitled "CCMA Asbestos Exposure and Human Health Risk Assessment" (EPA Report).[26] The EPA Report updated a study completed for BLM in September 1992 by PTI Environmental Services entitled "Human Health Risk Assessment for the CCMA."[27] BLM regards the EPA Report as presenting "the best available information on the risk associated with exposure to airborne asbestos fibers in [the] CCMA."[28]

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19 EIS at I-424; *see* ROD at 1-22, 1-25.

20 *See* ROD at 1-18.

21 *See id.*

22 *See id.* at 1-22.

23 *See* EIS at I-357.

24 *See* ROD at 1-23.

25 *See* 73 Fed. Reg. 24087 (May 1, 2008).

26 The EPA Report is available at https://archive.epa.gov/region9/toxic/web/pdf/ccmariskdoc24apr08-withoutappxg.pdf and https://archive.epa.gov/region9/toxic/web/pdf/ccmariskdoc24apr08_appxg.pdf (Appendix G) (last visited Aug. 9, 2016); *see* Answer (IBLA 2014-130, *et al.*) at 5; *see* ROD at 1-10; EIS at I-26, I-179, II-322.

27 *See* EIS at I-372.

28 Answer (IBLA 2014-130, *et al.*) at 5; Answer (IBLA 2014-131) at 11.

BLM stated that the temporary closure would remain in effect while it considered adopting an RMP, which would "determine if and how visitor use [in the CCMA] can occur without associated excess [human] health risks."[29] The temporary closure has remained in effect since it was imposed on May 1, 2008.

In order to address the potential environmental consequences of approving the IDs and other aspects of the RMP, and reasonable alternatives thereto, BLM prepared the EIS. BLM considered the Proposed Action and a total of 7 alternatives ranging from closure of the Serpentine ACEC to all forms of public use (making the May 1, 2008, temporary closure permanent (Alternative G)), to allowing historic public use to continue as in existence prior to the May 1, 2008, temporary closure (Alternative A (No Action Alternative)).[30] The other alternatives would provide for current multiple use in the CCMA (Alternative B); limited OHV recreation opportunities in the ACEC (Alternative C); vehicle access for non-motorized recreation opportunities in the ACEC and new OHV recreation opportunities outside the ACEC (Alternative D); pedestrian use in the ACEC and non-motorized recreation opportunities outside the ACEC (Alternative E); or public access to the ACEC for non-motorized recreation only (Alternative F).[31] BLM also sought in the Proposed Action and each of the other action alternatives to place varied restrictions on the timing and manner of OHV and other recreational use based on an assessment of the human health risk of exposure to asbestos and other factors. Under the No Action Alternative, OHV use in the CCMA would be managed in accordance with the 1984 Hollister RMP, as amended in 1986, 1999, and 2006, prior to the temporary closure.[32]

BLM designated the Proposed Action as its Preferred Alternative. BLM recognized that limiting annual visitor-use days would result in moderate long term adverse impacts because visitors recreate 5-12 days per year in the CCMA. BLM stated:

> [T]he Proposed Action would have major long term adverse impacts to OHV (motorized) recreation opportunities in the ACEC because the miles of routes . . . available for OHV use would be reduced by more

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[29] 73 Fed. Reg. at 24088.

[30] *See* EIS at I-34 to I-36, I-53 (Table 2.4 (Comparison of Alternatives)).

[31] *See* Answer in Anderson, *et al.*, IBLA 2014-130, at 31 ("[BLM would] emphasize motorized recreation in the CCMA's Serpentine ACEC (Alts. A, B, and C) and other CCMA zones (Alt. D).").

[32] *See* EIS at I-34.

> than 75% from the previously designated 242 miles of routes that were approved for OHV use in the 2006 ROD for CCMA Route Designation. Furthermore, limiting motorized access to highway licensed vehicles and ATV/UTV's would eliminate all single-track trail riding opportunities on public lands in the CCMA.[33]

Following an extensive public scoping period that began on September 6, 2007, BLM issued a Draft RMP/EIS on December 4, 2009, for a 90-day public comment period.[34] Based on its review of the comments, BLM issued the Proposed RMP/Final EIS on March 29, 2013, subject to a 30-day protest period.[35] A total of 21 protests were filed. The Assistant Director, Renewable Resources and Planning, BLM, issued protest resolution decisions on behalf of the Director, BLM, on February 4, 2014.[36]

The State Director and Field Manager issued the ROD and approved the RMP on February 11, 2014. They approved the Proposed Action, which provided, in relevant part, for recreational opportunities in the Serpentine ACEC and surrounding areas of the CCMA, while protecting OHV and other recreational users from the dangers of asbestos exposure, consistent with EPA's recommendations.[37] In general, BLM restricted OHV use in the ACEC so as to lessen the high levels of asbestos emissions, diminish the increased opportunity for exposure by members of the public to asbestos, and avoid the need to intensively manage areas with high concentrations of asbestos.[38] BLM provided for monitoring the effect of the IDs.[39]

BLM published a notice of availability of the ROD in the *Federal Register*.[40] In this notice, BLM committed to re-evaluating the peer-reviewed literature regarding the danger posed to human health, and specifically the health of OHV users in the CCMA, 3 years following issuance of the ROD.[41]

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33 EIS at I-357.

34 *See* 72 Fed. Reg. 51250 (Sept. 6, 2007) (Notice of Intent to Prepare RMP/EIS); 74 Fed. Reg. 63764 (Dec. 4, 2009) (Notice of Availability of Draft EIS).

35 *See* Appendix X of Vol. II of the EIS (comments); 78 Fed. Reg. 19294 (Mar. 29, 2013) (Notice of Availability of Proposed RMP/Final EIS).

36 *See* Protest Resolution Report, dated Feb. 4, 2014.

37 *See* ROD at 1-1, 1-2, 1-17.

38 *See* ROD at 1-17; EIS at I-7, I-422 ("[T]he Serpentine ACEC portion of the CCMA will no longer be considered an 'OHV Recreation Area.'").

39 *See* ROD at 1-3.

40 *See* 79 Fed. Reg. 8476 (Feb. 12, 2014).

41 *See* ROD at 1-22; EIS at I-5, I-8, I-29, I-116, II-250.

BLM informed the public that various decisions in the RMP constituted IDs that were appealable, including "the decisions designating routes of travel within designated areas for motorized vehicles."[42] Those IDs were set forth in Appendix II of the ROD. It is well established that while land-use planning decisions are not appealable to the Board, implementation decisions are subject to appeal.[43]

DOCKETING AND PROCEDURAL ISSUES

A total of 13 appeals were received and docketed by the Board, as follows: AMA (IBLA 2014-130); Steve Anderson, *et al.* (IBLA 2014-131); Ed Tobin (IBLA 2014-132); Jennifer Schreck (IBLA 2014-133); County of San Benito (County) (IBLA 2014-134); Curt McDowell (IBLA 2014-136); Randall Johnson (IBLA 2014-137); Terry Pederson (IBLA 2014-138); Justin Hensley (IBLA 2014-140); Ken Deeg (IBLA 2014-142); California Off-Road Vehicle Association (CORVA) (IBLA 2014-143); California Off-Highway Motor Vehicle Recreation Commission (Commission) (IBLA 2014-144); and California Enduro Riders Association (CERA) (IBLA 2014-145).

The appeal filed by Anderson, *et al.*, consists of nine identical letters, each signed by a separate individual.[44] BLM treated the letters as a single appeal, and requested the Board to consolidate them for purposes of appeal. We granted that request by order dated April 15, 2014, and assigned the letters a single docket number, IBLA 2014-131.

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[42] 79 Fed. Reg. at 8477.

[43] *See* 43 C.F.R. § 1610.5-3(b) ("Any person adversely affected by a specific action being proposed to implement some portion of a[n] [RMP] . . . may appeal such action pursuant to 43 CFR 4.400 [et seq.] at the time the action is proposed for implementation."); *Norton v. Southern Utah Wilderness Alliance [SUWA]*, 542 U.S. 55, 70 (2004) ("Appeal to the Department's Board of Land Appeals is available for 'a specific action being proposed to implement some portion of a[n] [RMP] or amendment.' 43 CFR § 1610.5-3(b)[.]"); *e.g.*, *Franklyn Dorhofer*, 155 IBLA 51, 56-57 (2001).

[44] Those individuals are Steve Anderson, Rt Caldwell, Jonathan Elam, Peter Larson, Ray Bennett, Richard Colenzo, Alan Hannum, and James Long. One of the letters includes no legible signature or other indication of the name of the appellant. An additional letter, signed by Kris Larcher, was not submitted with the nine letters subject to BLM's motion to consolidate. We include Larcher's appeal in Anderson, *et al.*, IBLA 2014-131.

The Board assigned separate docket numbers to the 11 appeals of AMA, Tobin, Schreck, McDowell, Johnson, Pederson, Hensley, Deeg, CORVA, the Commission, and CERA, as above noted. By order dated May 27, 2014, the Board granted BLM's motion to consolidate these 11 appeals (AMA, *et al.*).

We now conclude that the nine appeals that comprise Anderson, *et al.* (IBLA 2014-131), the 11 appeals of AMA, *et al.* (IBLA 2014-130; 2014-132; 2014-133; 2014-136; 2014-137; 2014-138; 2014-140; 2014-142; 2014-143; 2014-144; and 2014-145), and the remaining appeal of the County in IBLA 2014-134, all arise from the same facts and raise related questions of fact and law. Accordingly, we consolidate these appeals, pursuant to 43 C.F.R. § 4.404, for the purpose of a final decision on the merits.

BLM has filed an Answer to the appeals comprising Anderson, *et al.*; an Answer to the 11 consolidated appeals of AMA, *et al.*; and an Answer to the appeal submitted by the County.

By separate orders dated May 30, 2014, we denied requests to stay the effect of the ROD that were filed by Johnson and CERA.

STANDING TO APPEAL

Before considering the merits of the appeals, we must first address an important procedural matter, *i.e.*, whether certain of the Appellants have standing to appeal from the ROD. To have standing under 43 C.F.R. § 4.410(a), an appellant must demonstrate that it is both a "party to a case" and "adversely affected" by the decision, within the meaning of 43 C.F.R. § 4.410(b) and (d), respectively.[45] If either element is lacking, an appeal must be dismissed.[46]

A. AMA and Anderson, et al., Are Not Parties to the Case

[1] Under 43 C.F.R. § 4.410(b), "[a] party to a case . . . is one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal. . . ." We dismiss the appeal of AMA, IBLA 2014-130, because AMA does not meet the requirements of 43 C.F.R. § 4.410(b). While AMA refers to "previously submitted

[45] *See, e.g.*, *Western Watersheds Project*, 185 IBLA 293, 298 (2015).
[46] *Id.*

comments regarding the CCMA,"[47] we have found no comments in the record showing that AMA submitted comments in connection with the NEPA review that accompanied adoption of the CCMA RMP, or otherwise participated in the process leading to BLM's issuance of the ROD at issue.

BLM moves for dismissal of the appeals by Anderson, e*t al.*, IBLA 2014-131, on the basis that none of that group of appellants is a "party to a case" under § 4.410(b). BLM asserts that certain of these appellants cannot be identified at all, none can be identified as having filed any comment on the Draft EIS, and none filed a protest to the Proposed RMP. BLM states that "[t]he first time any of the Appellants participated in the process of approving the RMP was through the filing of these appeals."[48] We grant BLM's motion to dismiss the appeals by Anderson, *et al.*, since none of those appellants has established that he or she is a party to the case as required by § 4.410(b).[49]

B. Schreck, the County, and the Commission Are Not Adversely Affected by the ROD.

[2] Schreck, the County, and the Commission are each properly deemed to be a "party to a case," under 43 C.F.R. § 4.410(b) and Board precedent, because they "ha[ve] otherwise participated in the process leading to the decision under appeal, e.g., . . . by commenting on an environmental document, or by filing a protest to a proposed action."[50] However, to have standing to appeal, a party to a case must also be "adversely affected" by a BLM decision under 43 C.F.R. § 4.410(d). A party is adversely affected "when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest."[51] In addition, when an organization appeals a BLM decision, it must demonstrate either that the organization itself has a legally cognizable interest or that one or more of its members has a legally cognizable interest in the subject matter of the appeal, coinciding with the organization's purposes, that is or may be negatively affected by

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[47] Notice of Appeal (NOA) at 1.

[48] Answer (IBLA 2014-131) at 1-2, 2.

[49] *See, e.g., Blue Mountains Biodiversity Project*, 139 IBLA 258, 260 (1997).

[50] *See*, *e.g.*, *WildEarth Guardians*, 183 IBLA 165, 171 (2013); *see also* EIS, Vol. II, Appendix X, at II-236 to II-238 (Table X-1 (Commenting Agency and Organization List)) and II-469 to II-586 (Table X-5 (Form Letter Author List)) (all of the appellants except AMA and Anderson, *et al.*, Tobin, and Schreck filed comments on the Draft EIS); ROD at 1-4 (all of the appellants except AMA and Anderson, *et al.*, filed protests).

[51] *See*, *e.g.*, *Western Watersheds Project*, 185 IBLA at 298.

the decision.[52] Further, the legally cognizable interest must be shown to have been held by the appellant at the time of the decision that it seeks to appeal.[53]

An appellant is required to make colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, sufficient to establish a causal relationship between the approved action and the injury alleged.[54] It need not prove that an adverse effect will, in fact, occur as a result of the BLM action.[55] However, we have long held that the threat of injury and its effect on the appellant must be more than hypothetical.[56] "Standing will only be recognized where the threat of injury is real and immediate."[57] "[M]ere speculation that an injury might occur in the future will not suffice."[58]

In her single-page letter, Schreck claims that she seeks relief for the "thousands of riders" who will be "unfairly and unjustly" denied OHV use of the CCMA. She does not claim that she is one of the riders who has driven or is likely to drive an OHV in the CCMA, or is likely to be barred from using the CCMA. She asserts that BLM's closure of the CCMA "has adversely affected the surrounding communities by significantly reducing the tourist money . . . spent on food, gas, and lodging," and that "[n]earby riding areas have also been negatively impacted by the increased rider volumes, resulting in many visitors even being turned away from rider parks due to over capacity." However, she does not state that she lives in one of the surrounding communities or uses the nearby riding areas, and is likely to suffer as a consequence of BLM's decision.

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[52] *See id.* at 298-99; *Board of County Commissioners of Pitkin County, Colorado*, 186 IBLA 288, 308-10 (2015).

[53] *See Western Watersheds Project*, 185 IBLA at 298.

[54] *Id.* at 299; *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Colorado Open Space Council*, 109 IBLA 274, 280 (1989).

[55] *Western Watersheds Project*, 185 IBLA at 299.

[56] *Id.*; *see Missouri Coalition for the Environment*, 124 IBLA 211, 216 (1992); *George Schultz*, 94 IBLA 173, 178 (1986).

[57] *Legal & Safety Employer Research Inc.*, 154 IBLA 167, 172 (2001); *Laser, Inc.*, 136 IBLA 271, 274 (1996); *Salmon River Concerned Citizens*, 114 IBLA 344, 350 (1990).

[58] *Colorado Open Space Council*, 109 IBLA at 280.

The County asserts that its interest in "County roads" is injured by BLM's decision to close routes to all OHV use, or all use except administrative use.[59] However, the County offers no evidence that any of the routes identified in the RMP constitute County roads.[60] The County also asserts that the economy of the County and its citizens will be harmed by the closure of the CCMA to OHV use.[61] Such a general allegation does not establish the County's standing to appeal.[62]

The Commission claims to have a "legislative mandate to ensure citizens of California have sustainable opportunities for [OHV] recreation."[63] But the Board has stated that "'mere interest in a problem or concern with the issues involved does not'" suffice to demonstrate standing.[64] Rather, it must be demonstrated that the appellant engages in some use of the lands or resources at issue, or neighboring lands or resources, that would be negatively affected by BLM's decision.[65]

We conclude that Schreck, the County, and the Commission have demonstrated only a general interest in OHV use in the CCMA and a general concern with the related issues.[66] Because none of them has shown that BLM's approval of the RMP injures or is substantially likely to injure any legally cognizable interest, we dismiss their appeals for lack of standing.

The remaining Appellants, Tobin, McDowell, Johnson, Pederson, Hensley, Deeg, CORVA, and CERA, assert that they or their members have used and continue to use the CCMA in ways that will be impaired by BLM's decision to restrict OHV use, and accordingly make colorable allegations sufficient to support their standing to appeal.[67] We now turn to the merits of their appeals.

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[59] NOA at unpaginated (unp.) 2.

[60] *See* ROD, Appendix I, "Proposed Action Map" (denoting "County Roads").

[61] *See* Statement of Reasons (SOR) at 5-6.

[62] *See Board of County Commissioners of Pitkin County, Colorado*, 186 IBLA at 310-14.

[63] Commission Protest, dated May 6, 2013, at 1.

[64] *Western Aggregates, LLC*, 174 IBLA 280, 288 n.5 (2008) (quoting *Board of Commissioners of Pitkin County*, 173 IBLA 173, 178 (2007)).

[65] *See Board of Commissioners of Pitkin County*, 173 IBLA at 178.

[66] *See*, *e.g.*, NOA (Schreck) ("The BLM is denying the riding public access to their public land. . . . We should be allowed the same rights as the rest of the public.").

[67] *See* Tobin NOA at 1; McDowell SOR at unp. 1; Johnson Supplemental (Supp.) SOR at 4-5; Pederson NOA at 2; Hensley SOR at unp. 2; Deeg NOA at 2; CORVA NOA at unp. 1; CERA NOA at unp. 1.

THE MERITS OF THE REMAINING APPEALS

A. The Standard of Review

[3] BLM has the discretionary authority, under section 302(b) of FLPMA,[68] to regulate the use and operation of OHVs on the public lands.[69] A BLM decision implementing a land-use plan, such as a decision set forth in an RMP concerning OHV use of the public lands, will be affirmed if the decision adequately considers all relevant factors, reflects a reasoned analysis, and is supported by the record, absent a showing of compelling reasons for modification or reversal.[70] In challenging a BLM management decision, an appellant has the burden of demonstrating by a preponderance of the evidence that BLM committed a material error in its factual analysis, that BLM failed to give due consideration to all relevant factors, or that no rational connection exists between the facts found and the choices made.[71] Mere conclusory allegations of error, without supporting evidence, or mere differences of opinion will not overcome a BLM management decision that is supported by a rational basis.[72]

With the exception of Appellants' argument that BLM's IDs improperly prohibit or limit use of public routes in the CCMA contrary to the status of the routes as R.S. 2477 ROWs, their challenges to the IDs involve whether BLM met its obligations under NEPA. The adequacy of the EIS prepared to support the CCMA RMP and, specifically, the IDs contained therein, must be judged by whether it constitutes a "'detailed statement'" that took a "'hard look'" at all of the potential significant environmental consequences of the proposed action and reasonable alternatives thereto, considering all relevant matters of environmental concern.[73] The EIS must

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[68] 43 U.S.C. § 1732(b) (2012).

[69] *See* 43 C.F.R. Part 8340; *Rainer Huck*, 168 IBLA at 395; *Rocky Mountain Trials Association*, 156 IBLA 64, 70 (2001); *Robert P. Muckle*, 143 IBLA 328, 332-33 and n.1 (1998).

[70] *See Rainer Huck*, 168 IBLA at 395, and cases cited.

[71] *See Utah Trail Machine Association*, 147 IBLA 142, 144 (1999).

[72] *See West Cow Creek Permittees v. BLM*, 142 IBLA 224, 238 (1998); *SUWA*, 128 IBLA 382, 389-90 (1994); *Magic Valley Trail Machine Association, Inc.*, 57 IBLA 284, 287 (1981).

[73] *Backcountry Against Dumps*, 179 IBLA 148, 161 (2010) (quoting 42 U.S.C. § 4332(2)(C) (2006), and *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)), and cases cited.

contain "a 'reasonably thorough discussion of the significant aspects of the probable environmental consequences'" of the proposed action and alternatives thereto.[74]

[4] An appellant challenging a BLM decision to manage OHV use on the public lands, following preparation of an EIS, must carry its burden to demonstrate by a preponderance of the evidence, with objective proof, that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action, or otherwise failed to abide by section 102(2)(C) of NEPA.[75] The appellant must make an "'affirmative showing that BLM failed to consider a substantial environmental question of material significance,'" and cannot simply "'pick apart a record with alleged errors and disagreements[.]'"[76]

Further, in judging the adequacy of an EIS, the Board properly relies on the professional opinion of BLM's technical experts, concerning matters within the realm of their expertise, which is reasonable and supported by record evidence.[77] In challenging a BLM determination that relies on the professional opinion of its technical experts, the burden of proof falls to a party objecting to BLM's decision to establish, by a preponderance of the evidence, that BLM erred in its determination.[78] An appellant challenging such reliance must demonstrate, by a preponderance of the evidence, error in the data, methodology, analysis, or conclusion of the expert: "[An appellant must show that] BLM erred when collecting the underlying data, when interpreting that data, or when reaching the conclusion, and not simply that a different course of action or interpretation is available and supported by the evidence."[79] The appellant "must show not just that the results of [BLM's] study *could be* in error, but that they *are* erroneous."[80]

Above all, a mere difference of expert opinion about the likelihood or significance of environmental impacts will not suffice to show, to the Board's satisfaction, that BLM failed to fully comprehend the true nature, magnitude, or

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[74] *State of California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982) (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974)).
[75] *See, e.g., Backcountry Against Dumps*, 179 IBLA at 161.
[76] *Arizona Zoological Society*, 167 IBLA 347, 357-58 (2006) (quoting *In re Stratton Hog Timber Sale*, 160 IBLA 329, 332 (2004)).
[77] *See Backcountry Against Dumps*, 179 IBLA at 161-62.
[78] *West Cow Creek Permittees v. BLM*, 142 IBLA at 238.
[79] *Id.*
[80] *Id.*

scope of the significant impacts.[81] The Board's role "is not to decide whether an EIS or environmental assessment is based upon the best scientific data and methodology available or to resolve disagreements in the scientific community as to th[e] issues" raised by the appellant, but rather to determine whether BLM's analysis of the "'available data'" regarding likely significant impacts was reasonable and supported by evidence in the record.[82] Nor is the Board precluded from upholding an EIS that fails to remove all doubt regarding likely environmental impacts, since an EIS "'need not achieve scientific unanimity on the desirability of proceeding with the proposed action.'"[83]

B. None of the Appellants Has Demonstrated a Violation of NEPA

1. BLM's Reliance on the Conclusions in the EPA Report Concerning the Health Risks of Asbestos Exposure from OHV Use in the CCMA Was Reasonable

Several Appellants challenge BLM's ROD on the basis that the EPA Report presents unreliable evidence and erroneous conclusions regarding the health risks associated with naturally-occurring asbestos, particularly in the Serpentine ACEC, and that BLM's determinations regarding OHV use in the CCMA and Serpentine ACEC were improper under NEPA. There is no question that EPA's findings regarding the human health risks of asbestos emissions were central to BLM's decisions to prohibit or restrict OHV use in the Serpentine ACEC and the CCMA.[84]

In its Report, EPA "analyzed excess lifetime cancer risk under the current management situation (No Action Alternative) based on the average number of hours visitors spend in the ACEC conducting different types of recreation activities."[85] It collected air samples from the breathing zone of individuals riding motorcycles and engaged in other typical recreational activities in the CCMA.[86] Based on sample results, EPA calculated the risk for cancer in participants in seven scenarios of recreational use over the course of a day or weekend in the CCMA (1 (Weekend Rider), 2 (Day Use Rider), 3 (Day Use Hiker), 4 (Weekend Hunter), 5 (Combined

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81 *Backcountry Against Dumps*, 179 IBLA at 162.

82 *Center for Biological Diversity*, 181 IBLA 325, 341 (2012) (quoting *Wyoming Audubon*, 151 IBLA 42, 51 (1999)).

83 *Id.* (quoting *Life of the Land v. Brinegar*, 485 F.2d 460, 472-73 (9th Cir. 1973), *cert. denied*, 416 U.S. 961 (1974)).

84 *See* EIS at I-231.

85 *Id.* at I-363.

86 *See id.* at I-373.

Rider/Workday), 6 (Patrol), and 7 (Sports Utility Vehicle/Truck Patrol)), when such use amounted to 1 visit per year, 5 visits per year (Reasonable Maximum Exposure), or 12 visits per year, over the course of 30 years (for an adult or combined adult/child) or 12 years (for a child in the company of a family member). EPA noted that "[m]any CCMA users have stated that they have been riding in the CCMA for more than 30 years."[87] EPA concluded that visiting the CCMA more than 1 day per year would put adults and children above its acceptable risk of exposure to asbestos, and that exposure to airborne asbestos emissions in the course of typical recreational use of the CCMA could expose any individual to an excess lifetime cancer risk above the acceptable risk range of from 1 in 10,000 (or 1.E-04) to 1 in 1,000,000 (1.E-06).[88]

EPA's risk assessment for recreational users in the CCMA did "not predict individual exposures or individual health outcomes."[89] Nonetheless, BLM stated that, "[w]hile the risk assessment does not predict individual outcomes, there is more confidence that adverse health effects in humans [are] . . . associated with increased exposure to asbestos."[90] The EPA Report "was reviewed by members of the Agency's Technical Working Group for Asbestos, the California Department of Toxic Substances Control (DTSC), and the California Office of Environmental Health Hazard Assessment. *EPA reviewers and both California agencies agreed with and support [EPA's] methods and findings*."[91]

BLM states that EPA, in preparing the Report, "used standard and accepted practices for environmental asbestos sample collection, sample analysis, and risk assessment."[92] The limitations imposed on EPA's risk assessment by virtue of the fact that it sought to extrapolate studies of occupational exposure to recreational exposure were disclosed in the EIS. In its EIS, BLM stated that "the disease potential of asbestos is established by at least 40 epidemiological studies," and that "[t]hese studies have broadly demonstrated exposure-response or exposure-effect relationships for chrysotile-induced asbestosis."[93] BLM further states that "the scenarios [used in the EPA Report were] . . . designed to represent current and future exposures for

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87 *Id.* at I-373, II-212.
88 *Id.* at I-373 to I-374; *see id.* at I-36, I-380, II-223.
89 *Id.* at I-374.
90 *Id.* at II-219.
91 *Id.* at II-223 (emphasis added).
92 *Id*.
93 *Id*. at I-369; *see id.* at I-367 to I-369.

recreational and working users of [the] CCMA [and] . . . do not predict individual exposures or individual health outcomes."[94]

BLM concluded that motorized use of the Scenic Touring Route would, by using unpaved routes, "generate asbestos emissions and exposure to asbestos emissions in the ACEC for visitors," since it was well documented that "the vast majority of airborne asbestos dust in the [CCMA] is generated by human activities, primarily vehicle use."[95] EPA's air sampling methodology "was designed to capture typical exposures" by OHV users to dust clouds kicked up by other OHV users.[96] It determined the resulting excess lifetime cancer risk given varying degrees of exposure under the Proposed Action and each of the action alternatives.[97] BLM recognized that there was uncertainty in the risk assessment contained in EPA's Report, particularly with EPA's extrapolation from occupational exposure studies to recreational exposure, but concluded that its decision regarding the timing and manner of allowing OHV use of the ACEC was consistent with the results of that assessment. BLM stated:

> Uncertainties related to the exposure parameters in the CCMA assessment that could cause the estimated risk to be less or greater than the actual risk include[] the frequency of exposure and the time actually engaged in dust-generating activities; . . . and the representativeness of the areas used for the sampling as accurate models of typical CCMA conditions.[98]

BLM concluded that "[d]isease and death result from asbestos exposures, and the variability presented is only in the magnitude of the cancer effect and the possible range of estimates," and that "[f]ull disclosure of the uncertainties is standard in Risk Assessments and does not invalidate the overall finding that *the asbestos exposures at CCMA, and the attendant risks, are significant*."[99]

2. None of the Appellants Shows Error in BLM's Reliance on the EPA Report

Johnson, Pederson, and Hensley argue for various reasons that the EPA's conclusions are unreliable and that BLM erred in precluding or restricting OHV use in

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94 *Id. at I-374.*
95 *Id.* at I-387.
96 *Id.* at II-213.
97 *See id.* at I-379 to I-381, I-387 to I-388, I-391 to I-393, I-394, I-397 to I-399.
98 *Id.* at II-231; *see also id.* at I-367 to I-369, I-372 to I-374.
99 *Id.* at II-232 (emphasis added).

the Serpentine ACEC and the CCMA based on the EPA Study. However, they offer no evidence to undermine BLM's view that the EPA Report is based on standard practice for asbestos sample collection, sample analysis, and risk assessment.

Johnson takes particular exception to EPA's exclusion of the results of the studies of the risk posed to employees engaged in the mining and milling of asbestos, arguing that this exclusion improperly weighted EPA's assessment of the risk posed to OHV users.[100] Johnson's contrary opinion fails to demonstrate any particular error in EPA's work, and in any event does not rule out a human health risk for OHV users of the ACEC.[101] Further, he finds BLM's limitation of 5 visitor-use days per year unacceptable, but does not offer anything that he would consider acceptable.

Johnson also takes issue with EPA's protocol for sampling the air stirred by an OHV user, which provided that samples be obtained by two users following in the dust cloud of a lead user.[102] He asserts that this is atypical behavior for OHV users, since "OHV enthusiasts don't enjoy a mouth or nose full of dirt any more than anyone else."[103] He contends that this protocol improperly tipped the scales in favor of greater exposure than would normally be expected, inflating the risk to human health.[104] Johnson concludes, based on his own calculations, that EPA's "2008 results could be 1.8 to 2.48 times overprotective," and that BLM should have "reasonably discount[ed] the weight of [such results] . . . proportionally."[105] His difference of opinion does not show error in EPA's protocol or BLM's reliance upon the health risks identified and measured in the EPA Report.

Pederson challenges the validity of the EPA Report since it was not peer-reviewed, is based on occupational (not "periodic recreational") exposure, and disclosed results "barely . . . below the acceptable levels."[106] He states that the Report did not—and could not—include any "actual on site historical data" because "*[t]here have been no documented cases of health problems*" experienced by recreational users in the "over 50 years," or by loggers and miners in the "over 160 years," of use of the CCMA.[107] He also asserts that EPA ignored all of the scientific evidence holding that

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100 *See* Supp. SOR (IBLA 2014-137) at 7-9.
101 *See id.* at 9.
102 *See id.* at 9-11.
103 *Id.* at 10.
104 *Id.*
105 *Id.* at 13.
106 NOA (IBLA 2014-138) at 2.
107 *Id.* 3, (emphasis added).

asbestos in chrysotile form is "either benign, or very low in toxicity"; relied on test data obtained within 1 hour of blading a road; and overestimated the amount of time spent driving in and out of the area "by a factor of between 6 and 20," thus overestimating the amount of time that OHV motorcycle recreational users would be exposed to asbestos.[108] However, Pederson does not offer any evidence establishing that, over time, there will be no risk to the health of OHV motorcycle users from engaging in such use in the ACEC. He offers only a critique of EPA's risk assessment, with no contrary evidence.

And Hensley asserts that the EPA Report contains a significant error to the extent it expressly relied on testing undertaken in the CCMA over the course of 9 days, from September 2004 to September 2005, when conditions on the ground were said to be almost equally moist and dry. He claims that "none of the data collected . . . meets the *cited* criteria to be considered 'moist.'"[109] He states that EPA used U.S. Department of Agriculture criteria for classifying soil moisture content as "dry" or "moist," noting that none of the "moist" samples, in fact, meets the criteria for moist, since the soil moisture content did not rise to the minimum level of 25%.[110]

We are not persuaded that Hensley has shown error in BLM's reliance on EPA's health risk assessment. EPA concluded, on the basis of sampling taken at representative times during the year, that the levels of exposure to asbestos were basically the same as between the "dry" and "moist" seasons of the year, in the case of the ACEC.[111] EPA's "risk assessment indicate[d] that the exposure levels that exist during the summer dry season also exist during moist conditions."[112] Thus, it does not matter whether EPA properly characterized the soil moisture content at any particular time. Hensley offers no convincing argument or supporting evidence undermining EPA's assessment of the risk of exposure to asbestos over the course of a year.

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[108] *Id.* at 3.

[109] SOR (IBLA 2014-140) at unp. 8.

[110] *See id.* at unp. 9-13 (citing EIS at II-390 ("[S]oil moisture content during the November, 2004, sampling event ranged from 1.8 to 22.4 percent, with a mean of 8.7 percent")).

[111] *See* EIS at I-377, II-213 ("[T]he EPA results for the dry season and the wet or 'moist' season are comparable. There was no significant difference in the concentrations between dry and wet exposures. . . . Restricting the season of use would have negligible impacts on asbestos exposure and human health risk because EPA's [Report] explains that wet weather reduces but does not eliminate exposure."), II-213 to II-215, II-391.

[112] *Id.* at II-390.

3. BLM Properly Considered the Likely Effects of Asbestos Exposure Caused by OHV Use in the CCMA

As a general matter, Appellants take the position that BLM placed too much emphasis on protecting the public health from naturally-occurring asbestos, and too little emphasis on allowing OHV use of the Serpentine ACEC and the CCMA. They view the EPA Report, upon which BLM relies, as "compound[ing] together . . . all of the wors[t] case [scenarios]," thereby "resulting in an unrealistically high overall risk assessment."[113] They argue that OHV use could generally be allowed in the CCMA without posing a significant risk to public health. Further, they observe that, although "OHV motorcycle recreation was the primary activity that the public participated in before the [2008] closure," BLM's ROD now "allows no OHV motorcycle recreation on the public lands within the CCMA."[114] They appear to be particularly troubled by the fact that, prior to the closure imposed as a result of the EPA Report, the CCMA was fully open to OHV use.[115] They challenge the ROD as violating the environmental review requirements of NEPA, and conclude that BLM's decision must be set aside and the case remanded for further NEPA review and reconsideration of the matter.

Appellants argue that BLM failed to evaluate the true risk to the health of OHV users posed by the naturally-occurring asbestos in the Serpentine ACEC.[116] CERA, for example, speaks in terms of the risks to the health of OHV users who spend finite amounts of time in the affected areas, asserting that BLM failed to take into account the "actual health status of *the public that has been recreating* in the CCMA for over fifty years."[117] CERA argues that "[t]here have been no documented cases of health problems [or deaths] due to recreational exposure to the Chrysotile form of asbestos, the predominant form of asbestos in the CCMA."[118] CERA specifically objects to BLM's

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[113] McDowell SOR (IBLA 2014-136) at unp. 3.

[114] *See* Pederson NOA (IBLA 2014-138) at 2 ("The ROD/RMP allows no OHV motorcycle recreation nor organized OHV events on public lands within CCMA"); EIS at I-34, I-64 to I-65, I-107, I-148; *see also id.* at I-357 to I-358, I-421 to I-424 (effect of limiting OHV use in the ACEC on OHV users).

[115] *See*, *e.g.*, AMA NOA (IBLA 2014-130) at 1 ("This decision would reverse decades of permitted special event use enjoyed by the public"); Pederson NOA (IBLA 2014-138) at 2 ("OHV motorcycle recreation was the primary activity in CCMA for the past 50 years prior to the closure").

[116] *E.g.*, CERA NOA (IBLA 2014-145) at unp. 6.

[117] *Id.* (emphasis added); *see id.* at unp. 6-7.

[118] *Id.* at unp. 3; *see id.* at unp. 4.

decision to preclude such use in the Tucker, Condon, Cantua, and San Benito River Zones as arbitrary and capricious, since the EPA Report did not disclose any risk of asbestos exposure by such users in those areas of the CCMA and since highway-licensed motorcycles would be allowed.[119] CORVA notes that non-highway licensed ATV/UTVs would also be allowed outside the ACEC.[120]

McDowell asserts that "not a single piece of physical, clinical, or epidemiological evidence exists during the past 50 years that anyone was or would ever be harmed in any way" by engaging in OHV use of the CCMA.[121] He argues that "the EPA's findings about the CCMA risk levels [are] . . . clearly wrong, because [BLM] has found no cases of lung cancer, asbestosis or other respiratory disease whatsoever, in any OHV participant since it became a favorite pastime starting in 1946, in any of the 35,000 annual visitors[.]"[122] He further states that BLM ignored studies commissioned by the State that showed the lifetime increased risk of cancer from recreating in the CCMA as "equivalent to that of smoking approximately 2 cigarettes [per year]."[123] He contends that concerns exist regarding "the validity of the data" in the EPA Report, since EPA used "flawed" methodology by not approximating the rate of human inhalation, relying instead on continuously operated air sample collection devices; assuming higher than normal visitation rates and very high OHV mileage per visit; and conducting tests immediately after blading roads when airborne dust is maximized.[124] McDowell concludes that "[t]he risks [of asbestos exposure] are empirically so low that no decision can be justified that reduces OHV activity in the area, let alone bans it completely."[125]

Tobin objects to BLM's assessment of the risk of asbestos exposure as inadequate because it failed to take into account a May 2008 report prepared by the Occupational Safety & Health Administration (OSHA), entitled "BLM Employee Exposure to Naturally Occurring Asbestos at the Clear Creek Management Area and the Knoxville Management Area" (BLM Employee Report). Tobin argues that the conclusions of this Report, which was based on "many year[']s worth of air samples[,] . . . stand in stark

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[119] *See id.* at unp. 5 ("The [EPA] Asbestos Report does not cover this geographic area").
[120] *See* CORVA NOA (IBLA 2014-143) at unp. 1.
[121] SOR (IBLA 2014-136) at unp. 2.
[122] *Id.* at unp. 4.
[123] *Id.* at unp. 2.
[124] *Id.* at unp. 3.
[125] *Id.*

contrast to the EPA report."[126] He points to page 1 of his May 2, 2013, protest, where he argued that the findings in the BLM Employee Report "*appear[]* to contradict the findings of the EPA, stating that BLM employees may operate an [OHV] for more than 44 days a year before they cross a risk threshold."[127] He also quotes his comment on the Draft EIS, where he asserted that the BLM Employee Report "*appears* to state that while employees are exposed to asbestos while working in the CCMA, the exposures are below or well below the [OSHA] personal exposure limit . . . and in some cases below the detectable limit."[128] Tobin concludes that this inadequacy calls into question the "integrity of the decisions made in the [CCMA] RMP."[129]

We reject Tobin's claim that BLM failed to take its Employee Report into account. In fact, Tobin presented this argument in his comments on the Draft EIS and his protest of the Proposed RMP/Final EIS, and BLM responded to that argument.[130] BLM concluded that the results of its Employee Report, which evaluated OSHA compliance concerning BLM employees, used different methods than in the EPA Report, which guided BLM's land-use planning.[131] Tobin fails to establish that BLM erred in primarily relying on the EPA Report, rather than its own report.

Hensley also asserts that BLM's physical closure of two OHV routes ("Trails 113, 115") in 2011, with fencing, as documented in an attached December 2013 photograph, "prejudiced" BLM's decision-making in the ROD.[132] We agree that BLM is required to avoid taking any action that will prejudice its selection of alternatives to a proposed action, pending its NEPA review and decision-making process.[133] However, we are persuaded by BLM's response that the routes were physically closed following a January 12, 2010, Decision Record (DR), which sought, consistent with

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[126] NOA (IBLA 2014-132) at 2. The BLM Employee Report is available at http://www.salinasramblersmc.org/tobin/blog/doi-osha-response-0508[1].pdf (last visited Aug. 9, 2016).

[127] *Id.* at 3 (emphasis added).

[128] *Id.* (emphasis added).

[129] *Id.* at 2.

[130] *See* EIS at II-438 ("DOI [Department of Interior] employee monitoring has also demonstrated increased exposure during dust-generating activities within the [ACEC]"); Tobin NOA at 3-4.

[131] *See* Answer (IBLA 2014-130, *et al.*) at 25-27.

[132] SOR (IBLA 2014-140) at unp. 14.

[133] *See* 40 C.F.R. §§ 1502.2(f) and 1506.1(a); *e.g.*, *Oregon Chapter of the Sierra Club*, 172 IBLA 27, 48 (2007).

the existing land-use plan, "to protect public health [and] . . . the [F]ederally listed San Benito evening primrose [(*Camissonia benitensis*)] and its associated habitat."[134]

We discern no prejudice on BLM's part. In stating that "many *but not all* of the Alternatives" considered by BLM included closing the routes, Hensley effectively concedes that BLM considered alternatives that designated the routes as open.[135] In fact, in the RMP, BLM did not close the two routes to motorized use, but changed their designation from open to motorized use to open to use by highway licensed vehicles with a permit.[136]

Finally, CERA objects to BLM's decision to allow highway licensed motorcycles, but not non-highway licensed motorcycles (commonly known as "dirt bikes") in the CCMA, since "[t]here has been no data presented" to show that the latter would be "at a greater potential health risk than" the former, thus rendering the decision arbitrary and capricious.[137] Similarly, CORVA asserts that, given the absence of differences in the consequences of vehicular use, BLM's decision to preclude "off-highway licensed" motorcycles," but allow "highway licensed" motorcycles in the CCMA is "arbitrary," "unnecessarily harsh," "inconsistent with OHV management practices employed by the BLM statewide," and/or "without merit."[138]

BLM recognized that the risks associated with asbestos exposure in the ACEC is the same regardless of vehicle type, but concluded that limiting OHV use to highway licensed vehicles would restrict use by children, thus minimizing their health risk.[139] BLM emphasized that "children are of special concern because in a majority of

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[134] Answer (IBLA 2014-130, *et al.*) at 18-19; *see* DR, dated Jan. 12, 2010 (Part of Attachment 1 to Answer (IBLA 2014-130, *et al.*)); EIS at I-216 ("Most of the occupied and potential San Benito evening primrose habi[t]at within the core OHV use area is now closed to OHV use and protected by fences and barricades.").

[135] SOR (IBLA 2014-140) at unp. 14 (emphasis added).

[136] *See* Answer (IBLA 2014-130, *et al.*) at 18 ("[W]hile these two routes remain available for limited use, the limitations on use have changed.").

[137] NOA (IBLA 2014-145) at unp. 5.

[138] CORVA NOA at unp. 1; Commission NOA at 2, 3; AMA at 1, 2; County SOR at 8; *see* Commission NOA at 3 ("[Highway licensed] motorcycles have a similar wheelbase, tire surface and engine capacity to [off-highway licensed motorcycles]. . . . [Off-highway licensed motorcycles] would certainly be able to utilize the same parking/unloading areas and routes/trails of the larger ATV[/UTVs][.]").

[139] Answer (IBLA 2014-130, *et al.*) at 32; *see* EIS at I-385, I-400.

activity-based samples at CCMA, the concentration of asbestos measured in the child's breathing zone exceeded the asbestos concentration in the companion adult sample," and that "a child's life expectancy exceeds the latency period for asbestos-related disease."[140] We see no basis for CERA's objection.

None of the Appellants offers any convincing argument or supporting evidence that undermines BLM's analysis and conclusions regarding the risk of exposure by OHV users to naturally-occurring asbestos in the Serpentine ACEC and the CCMA. BLM's task was to evaluate the degree of risk associated with recreating in the ACEC. The record contains no scientific evidence that there is no risk to human health because asbestos is either benign or very low in toxicity. Nor does the record support the notion that OHV riders in the ACEC would have low levels of exposure to asbestos. Appellants all agree that BLM's decisions to close or limit OHV use in the Serpentine ACEC and CCMA are improper. However, none of them has shown that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action, in violation of section 102(2)(C) of NEPA.[141]

4. BLM's Consideration of Mitigation Measures Was Reasonable

BLM is required by NEPA to consider mitigation measures and assess their effectiveness in ameliorating the adverse environmental impacts of a proposed action, and thus to fairly evaluate the resulting environmental consequences.[142] A number of the Appellants argue that BLM failed under this standard by not considering mitigation measures that would avoid closing and restricting OHV use on certain of the roads in the CCMA, or at least would lessen the number of roads closed and allow greater use of other roads. For example, CORVA states that BLM failed to consider opportunities "to ease the burden" of closing the public lands in the CCMA to OHV motorcycle use.[143]

BLM has, in addressing the Proposed Action and reasonable alternatives thereto, already considered whether, where, and how to enhance OHV opportunities throughout the CCMA, both inside and outside the ACEC. It declined to consider enhancing OHV opportunities outside the CCMA, since the scope of the NEPA review

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140 EIS at II-230.

141 *See*, *e.g.*, *Backcountry Against Dumps*, 179 IBLA at 161.

142 *See* 40 C.F.R. § 1508.25(b)(3); *e.g.*, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351-52 (1989); *South Fork Band Council of Western Shoshone of Nevada v. U.S. Department of the Interior*, 588 F.3d 718, 727 (9th Cir. 2009).

143 NOA (IBLA 2014-143) at unp. 1.

and decision-making process was focused on managing public lands in the CCMA.[144] CORVA does not indicate, and we are not aware, of what mitigating measures BLM should have considered.

McDowell states that BLM failed to justify not adopting "waivers, liability indemnifications or warning signs," which would allow OHV users to assume the risk of asbestos exposure.[145] Indeed, he objects to BLM's adoption of "zero acceptable risk" in the case of OHV use, when it accepts "other environmental risks such as falling, drowning, freezing, or getting attacked by animals" in the case of hiking and other recreational activity on the public lands, thus "discriminat[ing] against OHV users."[146] BLM considered adoption of a waiver of liability (or indemnification of risk) approach, but concluded that it would neither benefit public health nor achieve the purpose of the proposed RMP, since it would not reduce exposure to asbestos, and might even greatly undermine public health, increasing exposure to asbestos by indicating that BLM approved of an unacceptable risk.[147] McDowell does not show error in BLM's assessment of the effectiveness of this measure. Nor does he justify failing to take into account the human health threats posed to OHV users by exposure to asbestos in the CCMA.

Deeg objects to BLM's failure to consider mitigating the risk to human health from asbestos emissions during motorized use by suppressing dust and hardening route surfaces.[148] BLM briefly considered such measures, noting that they were not generally preferred by OHV users, economically feasible, or guaranteed to promote public health, given that OHV users could still be affected by asbestos from areas adjacent to roadways stirred up by wind and passing vehicles.[149] Nonetheless, BLM adopted such measures, providing that it would suppress dust and harden road surfaces "as needed."[150]

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144 *See* EIS at I-17 to I-18.

145 SOR (IBLA 2014-136) at unp. 4.

146 *Id.*

147 *See* EIS at I-384, II-299.

148 *See* NOA (IBLA 2014-142) at 5.

149 *See* EIS at I-367 ("BLM was unable to quantify reductions in human health risk and asbestos emissions from implementation of mitigation measures because reliable data on the effectiveness of surface hardening techniques or dust suppression on roads in the CCMA cannot be obtained because of cost and feasibility issues."), I-369 to I-370, I-392 to I-393 (Table 3.3-1 (Comparison of Dust Mitigation Measures for Reducing Chrysotile Emissions From Unpaved Road)), I-400, I-408 to I-409.

150 ROD at 1-20 (HAZ-BG3); *see* EIS at I-423.

We conclude that none of the Appellants has demonstrated any error in BLM's adoption of certain mitigation measures and rejection of others. Their mere disagreement with the IDs does not meet their burden to show error under FLPMA or NEPA.

C. None of the Routes Has Been Determined to Have R.S. 2477 Status

Johnson asserts that BLM's decision to designate routes in the Serpentine ACEC portion of the CCMA as closed or limited to motorized vehicle use is inconsistent with the status of the roads as R.S. 2477 ROWs. He states adds that the R.S. 2477 status has already been established by BLM in the case of the Clear Creek Road, and probably in the case of the other roads in the ACEC.[151] But Johnson offers no evidence to show the existence of an R.S. 2477 ROW in the CCMA.

[5] R.S. 2477 provided simply that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." The Tenth Circuit has stated that "no administrative formalities" were required of the United States to establish, and "no formal act" was required of a State or local government to publicly accept, an R.S. 2477 ROW.[152] The existence and scope of an R.S. 2477 ROW is determinable as a matter of State law, since the grant is "self-executing," with the ROW coming into existence "automatically when a public highway [is] established across public lands *in accordance with the law of the state*."[153] "[T]he critical date for determination of whether or not [a] road is a public highway is October 21, 1976, the date of passage of FLPMA," which repealed R.S. § 2477.[154] "[FLPMA] thus had the effect of 'freezing' R.S. 2477 rights as they were in 1976."[155]

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[151] *Id.* at 12-13.

[152] *SUWA v. BLM*, 425 F.3d 735, 741 (10th Cir. 2005).

[153] *Standage Ventures, Inc. v. Arizona*, 499 F.2d 248, 250 (9th Cir. 1974) (emphasis added); *see also SUWA v. BLM*, 425 F.3d at 768 ("[F]ederal law governs the interpretation of R.S. 2477, but . . . in determining what is required for acceptance of a[n] [ROW] under the statute, [F]ederal law 'borrows' from long-established principles of state law, to the extent that state law provides convenient and appropriate principles for effectuating congressional intent"); *Sierra Club v. Hodel*, 848 F.2d 1068, 1083 (10th Cir. 1988) ("[T]he weight of [F]ederal regulations, state court precedent, and tacit congressional acquiescence compels the use of state law to define the scope of an R.S. 2477 [ROW]").

[154] *Nick DiRe*, 55 IBLA 151, 155 (1981).

[155] *SUWA v. BLM*, 425 F.3d at 741.

BLM is not authorized to make binding determinations concerning the existence and scope of R.S. 2477 ROWs.[156] However, it may make non-binding R.S. 2477 determinations for its own land-use planning and administration purposes.[157]

It is now well established, as a matter of Departmental case law, that an R.S. 2477 ROW will be deemed to exist, for purposes of BLM management of the public lands, where it has been judicially determined by a court of competent jurisdiction or administratively determined by the Department that the requirements of R.S. 2477 have been satisfied.[158] We find no such judicial or administrative determination concerning any of the County roads at issue.[159] Johnson offers no evidence of any such adjudication.

Further, BLM was not required to adjudicate the R.S. 2477 status of the County roads in the course of deciding whether to adopt the proposed decisions for implementing the RMP.[160] As the Board stated in *Rainer Huck*,

> BLM did not need to decide the validity of the R.S. 2477 assertions in order to make its route designations, especially since it did not intend its analysis to affect any R.S. 2477 validity determinations and indicated that the [Travel] Plan [designating routes as open or closed to OHV use] would be adjusted to reflect any R.S. 2477 decisions.[161]

Put simply, BLM is not required to administratively determine the validity of an R.S. 2477 ROW before closing or otherwise managing roads. In affirming the Board's decision in *Rainer Huck*, the U.S. District Court stated that "BLM was not required to determine the validity of the R.S. 2477 claims prior to adopting the Travel Plan."[162]

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156 *See Uintah County, Utah*, 182 IBLA 191, 195 (2012).

157 *See id.*

158 *See, e.g., Tabor Cattle Co. v. BLM*, 170 IBLA 1, 16, n.10 (2006) (citing *SUWA v. BLM*, 425 F.3d at 757-58).

159 *See* Answer (IBLA 2014-130, *et al.*) at 37 ("BLM has issued no right of way and no RS 2477 claim has been recognized by any court."); Answer (IBLA 2014-134) at 15 ("Certain roads in the CCMA have been variously claimed (or not) by the County and informally recognized (or not) by the BLM over the last few decades.").

160 *See Kane County, Utah v. Salazar*, 562 F.3d 1077, 1087 (10th Cir. 2009); *Uintah County, Utah*, 182 IBLA at 195-96.

161 168 IBLA at 398-99.

162 *Williams v. Bankert*, 2007 U.S. Dist. LEXIS 77503 (D. Utah), at *17-*20.

We made an observation in *Uintah County, Utah*, that is equally applicable here: "This is not a case where the County has 'previously carried [its] evidentiary burden' to establish that the routes in question are 'valid existing rights' within the meaning of the RMP."[163] In administratively designating the routes in the CCMA as Open, Closed, or Limited to Motorized Use, for land-use management purposes, BLM's action did not violate R.S. 2477, since BLM did not, by design or action, affect any R.S. 2477 status of the routes. Nor was BLM required to base its land-use management decisions on the "likely" future status of the roads.[164] Should any roads in the CCMA be later adjudicated as R.S. 2477 roads, BLM may consider, at that time, amending or revising the RMP in order to take that fact into account.

BLM plainly indicated, in adopting the RMP, that it did not intend to affect the R.S. 2477 status of the routes. BLM concluded that issues relating to the existence and scope of R.S. 2477 ROWs in the Serpentine ACEC and the rest of the CCMA were beyond the scope of its decision-making in adopting the RMP:

> [H]ighways established between 1866 and 1976 were grandfather[ed] as valid existing rights. In recent years, there has been growing debate and controversy regarding whether or not certain highways were authorized pursuant to R.S. 2477 and, if so, the extent of the rights obtained. However, *the issues related to R.S. 2477 are outside the scope of BLM's land use decisions for transportation and travel management on CCMA public lands* because the U.S. Tenth Circuit Court of Appeals ruled that the validity of R.S. 2477 claims can only be determined through the courts[.][165]

Nonetheless, BLM noted: "BLM's Proposed Plan . . . does not include proposals to decommission or vacate the[] [R.S. 2477] public highways, and the proposed restrictions on public use of designated routes within the subject area would allow for continued historical uses except for OHV recreation due to the human health risk[.]"[166] More specifically, BLM stated, concerning the roads within the CCMA:

> The following roads, Clear Creek (R1), Mexican Lake (R11), Wildass (R15), and Sawmill Creek (T158) have been informally identified as "County Roads" for a number of years. However, no

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163 182 IBLA at 196.
164 SOR (IBLA 2014-134) at 7.
165 EIS at I-7 (citing *SUWA v. BLM*, 425 F.3d 735 (10th Cir. 2005) (emphasis added)).
166 *Id.* at II-217.

> record exists that San Benito County has a[n] [ROW] or any legal right to these roads. The BLM has no record that the County established a[n] [ROW] on the 26.1 miles of roads. The County has provided no information to the BLM to assert any [ROWs] and takes no responsibility for the roads, so by default these are Federal roads.[167]

Johnson objects to BLM's decision to provide limited access to "County of San Benito public roads/public right of way easements," identified as "Clear Creek Road, New Idria Road, Mexican Lake Road, Wildass Road, and Sawmill Creek Road," totaling approximately 25 miles, by providing that only authorized parties would be permitted to enter, through locked gates, the Serpentine ACEC from the west (using the Clear Creek Road) and the north (using the New Idria Road).[168] He states that these roads have been in continuous and regular use since they came into existence for the purpose of accessing private lands in the ACEC, connecting areas east and west of the CCMA, and accessing public lands in the ACEC for mining, logging, and hiking and other recreational use. Johnson asserts that the County has "demonstrated ownership of the public right of way easements . . . through various Resolutions passed by the San Benito County Board of Supervisors."[169] He refers to Resolution No. 2008-34, dated May 13, 2008, in which the Board of Supervisors "resolv[ed] to temporarily close" these roads, and Resolution No. 2010-36, dated April 6, 2010, in which the Board of Supervisors "resolv[ed] to reopen" these roads.[170] He recognizes that the County may not have formally accepted the grant of the R.S. 2477 ROWs, but contends that the grant was nonetheless clearly accepted under California law by virtue of "longstanding and continuous public use as highways[.]"[171]

Johnson states that BLM has already agreed that the Clear Creek Road is an R.S. 2477 County road in connection with the case of *Niva v. United States*.[172] He argues that in *Niva* BLM asserted, in connection with its motion for summary judgment and dismissal, that the County, not BLM, was responsible for maintaining the Clear Creek Road and was accordingly liable to the plaintiff for injuries sustained due to lack

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167 *Id.* at I-189.
168 SOR (IBLA 2014-137) at 2.
169 *Id.* at 3-4.
170 *Id.*
171 *Id.* at 5; *see id.* at 5-7 (citing *County of Inyo v. Department of the Interior*, 873 F. Supp. 2d at 1244-45).
172 2004 U.S. Dist. LEXIS 20392 (N.D. Cal.), *rev'd and remanded on other grounds*, 245 Fed. Appx. 621 (9th Cir. 2007).

of road maintenance.[173] Johnson also emphasizes that the County had obtained an ROW easement for the road from BLM.[174] He notes that, while BLM has agreed that Clear Creek Road is an R.S. 2477 County road, it has yet to make that same determination for the New Idria, Mexican Lake, Wildass, and Sawmill Creek Roads. Nonetheless, he posits that it is reasonable to believe that BLM would, relying on the California law disclosed in the *County of Inyo* case, conclude that these other roads are also R.S. 2477 County roads.[175]

Johnson concludes that, while BLM may regulate the means of travel on the County roads within the ACEC, BLM does not have the "authority to bar public access" to these roads or "to require permits for travel upon them within the ACEC[.]"[176] Thus, he asserts that BLM can limit public motorized travel to highway licensed motorized vehicles, but cannot require a permit for travel on these roads, nor restrict their use to daylight hours or for only 5 days per year.[177] Johnson further argues that the same rationale reasonably applies in the case of the other County roads.

Johnson argues that BLM is foreclosed from concluding that the Clear Creek Road, which provided the principal access to the ACEC, is not an R.S. 2477 ROW on the basis that a "binding determination" that it was an R.S. 2477 ROW was made in the *Niva* case.[178] He invokes the doctrine of collateral estoppel, which is plainly not applicable in the present circumstances.[179] The reported representations regarding BLM's litigation position in *Niva* do not amount to a judicial determination concerning

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[173] SOR (IBLA 2014-137) at 8 (citing *Niva v. United States*, 2004 U.S. Dist. LEXIS 20392, at *2-*3).

[174] *See id.* (citing *Niva v. United States*, 2004 U.S. Dist. LEXIS 20392, at *7-*8 ("For purposes of this motion, the parties agreed that the County of San Benito possessed an easement for Clear Creek Road[.] . . . It is also undisputed that the County did not . . . abandon its right-of-way easement over the road.")).

[175] *See id.*

[176] *Id.* at 9.

[177] *See id.* at 9-10.

[178] *Id.* at 12; *see id.* at 12-13.

[179] *See, e.g., Muskingum Mining Co. v. Office of Surface Mining Reclamation and Enforcement*, 113 IBLA 352, 356-57, 357 ("'Under collateral estoppel principles, once an *issue* is actually litigated and necessarily determined, that determination is conclusive in subsequent suits based on a different cause of action but involving a party or privy to the prior litigation.'" (quoting *United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1000 (9th Cir. 1980)), 357-58 (1990).

the R.S. 2477 status of the Clear Creek Road binding thereafter on BLM. BLM is not now prevented from taking the position that no judicial or administrative determination has yet been made concerning the R.S. 2477 status of the Clear Creek Road. In order for *Niva* to be binding on the Department, the question of the status of the Clear Creek Road must have been raised and decided by the court in *Niva*. However, all that happened in *Niva* is that BLM adopted the litigation posture that it was not responsible for maintaining the Clear Creek Road, since the County held an easement for the Clear Creek Road that may have arisen pursuant to R.S. 2477.

So far as concerns the other County roads, Johnson admittedly points to no judicial or administrative determination that they constitute R.S. 2477 ROWs. Nor does BLM have any obligation to administratively determine whether any of the routes are R.S. 2477 ROWs. We find nothing in the County's resolutions, which were adopted after the 1976 repeal of R.S. 2477, to suggest that any of the County roads were covered by a pre-existing R.S. 2477 ROW.

Johnson, however, argues that, by closing the remaining roads in the ACEC to any public use, BLM has in fact made a binding determination contrary to current BLM policy.[180] Johnson is mistaken. BLM clearly eschewed determining the R.S. 2477 status of any roads in the ACEC, and did not make even an administrative determination for its own management purposes. We cannot agree with Johnson or the County that closing or limiting any of the roads in the CCMA to OHV use is contrary to their R.S. 2477 status, since such status has not been shown to exist.[181]

CONCLUSION

We see no reason to question BLM's conclusion that "[t]here is no uncertainty as to the toxic effect of asbestos or in the conclusion that asbestos exposure occurs in the CCMA."[182] BLM decided, based on the EPA findings, to take a cautious and conservative approach to managing OHV use in the Serpentine ACEC and the rest of the CCMA. BLM's paramount objective was to guarantee the health and safety of the American public. Appellants have not met their burden to demonstrate that, in issuing the IDs in the CCMA RMP, BLM misjudged, overlooked, or otherwise erred in its assessment of the resulting likely impacts to the human environment, or in any manner

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180 *See* SOR (IBLA 2014-137) at 14.

181 *See Charles W. Nolen*, 168 IBLA 352, 360, 363 n.12 (2006).

182 Answer (IBLA 2014-130, *et al.*) at 11-12 (citing EIS at II-232 ("Disease and death result from asbestos exposures")).

acted in violation of section 102(2)(C) of NEPA. Nor have they shown that BLM violated any other applicable law, including FLPMA and R.S. § 2477. Appellants, at best, have shown that they disagree with the IDs, which are, in some instances, contrary to their avowed aims. Mere disagreement does not justify overruling or modifying the ROD. We therefore affirm BLM's decision.

To the extent not explicitly or implicitly addressed, any other arguments advanced by Appellants have been considered and rejected as contrary to the facts or law, or immaterial to the final disposition of the appeals.[183]

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,[184] BLM's decision is affirmed.

/s/
James F. Roberts
Deputy Chief Administrative Judge

I concur:

/s/
Christina S. Kalavritinos
Administrative Judge

[183] *See Glacier-Two Medicine Alliance*, 88 IBLA 133, 156 (1985) (citing *National Labor Relations Board v. Sharples Chemicals, Inc.*, 209 F.2d 645, 652 (6th Cir. 1954)).
[184] 43 C.F.R. § 4.1.